

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAMON OWENS-BEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:10CV952
	)	
STATE OF NORTH CAROLINA,	)	
et al.,	)	
	)	
Respondents.	)	

**O R D E R**

On December 20, 2010, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. (Docket Entries 2 and 3.) Petitioner filed objections to the Recommendation within the time limit prescribed by Section 636. (Docket Entry 4.)

The Court has reviewed Petitioner's objections de novo and finds they do not change the substance of the United States Magistrate Judge's Recommendation which is affirmed and adopted.

**IT IS THEREFORE ORDERED** that this case being construed as a habeas petition under 28 U.S.C. § 2254 is dismissed sua sponte without prejudice to Petitioner filing a new petition which corrects the defects of the current petition. The new petition must be accompanied by either the five dollar filing fee or a current application to proceed in forma pauperis.

**IT IS FURTHER ORDERED** that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting

the conviction, nor a debatable procedural ruling, a certificate of appealability is denied.

This the 31<sup>st</sup> day of January, 2013

/s/ N. Carlton Tilley, Jr.  
Senior United States District Judge